

gered throughout the 48 conterminous States of the United States, except in Washington, Oregon, Minnesota, Wisconsin, and Michigan, where it will be listed as Threatened. Until now, the Endangered Species Act of 1973 has applied only to the subspecies *Haliaeetus leucocephalus leucocephalus*. This rulemaking will extend the protective provisions of the Endangered Species Act of 1973 to all bald eagles in the 48 conterminous States, and clarify the listed status of this species.

**EFFECTIVE DATE:** The amendments will become effective on March 16, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Keith M. Schreiner, Associate Director-Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

The bald eagle (*Haliaeetus leucocephalus*) has an overall range encompassing Canada, Alaska, and the 48 conterminous States of the United States. Two subspecies have been named: *H. l. alascanus*, the northern bald eagle, and *H. l. leucocephalus*, the southern bald eagle. The latter was listed as Endangered in the FEDERAL REGISTER of March 11, 1967. In the List of Endangered and Threatened Wildlife published in the FEDERAL REGISTER of July 14, 1977, the known distribution of the southern bald eagle is given as the United States south of 40° North Latitude. This line was arbitrarily selected for purposes of convenience to separate the two subspecies of bald eagles. When the southern bald eagle was listed as Endangered in 1967, the northern subspecies was not listed, primarily because the Alaskan population of that subspecies was not considered Endangered. At that time, it was not legally possible to list only a portion of a subspecies. Additionally, at that time there was no Threatened category.

In the FEDERAL REGISTER of July 12, 1976 (41 FR 28525-28527) the Service proposed to delete the name *Haliaeetus leucocephalus leucocephalus* from the List of Endangered and Threatened Wildlife. Instead, it was proposed to list the entire species *Haliaeetus leucocephalus* as Endangered throughout the conterminous 48 States of the United States, except in Washington, Oregon, Minnesota, Wisconsin, and Michigan, where the species would be listed as Threatened.

A number of problems had resulted from listing only the southern bald eagle. In the first place, there is no morphological or geographical basis for distinguishing the two named sub-

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**Title 50—Wildlife and Fisheries**

**CHAPTER 1—UNITED STATES FISH AND WILDLIFE, SERVICE, DEPARTMENT OF THE INTERIOR**

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

**Determination of Certain Bald Eagle Populations as Endangered or Threatened**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rulemaking.

**SUMMARY:** The Service issues a rulemaking which deletes the subspecific name *Haliaeetus leucocephalus leucocephalus* (southern bald eagle) from the List of Endangered and Threatened Wildlife and Plants. Instead, the entire species *Haliaeetus leucocephalus* (bald eagle) will be listed as Endan-

species. Although Alaska eagles average larger than Florida eagles, there is a gradual cline between the two extremes all across North America, with no clear breaking point. Moreover, there is considerable movement of eagles of both subspecies into each other's breeding range during non-breeding periods. Southern bald eagles may wander northward as far as Canada during the late summer. Northern bald eagles migrate southward in large numbers for the winter. With respect to the species as a whole, the bald eagle probably has a larger regularly inhabited range than any other species now listed or being considered for listing. Over this vast range, status varies widely, with populations reportedly abundant in some areas and nearly extirpated in others. In certain parts of the northern half of the 48 conterminous States, bald eagle populations are in worse condition than within certain areas south of 40°N. In the upper Great Lakes region, and in the northwest, breeding populations seem to be doing relatively well, but these populations are small in absolute numbers. Large aggregations of bald eagles cross the Canadian border to spend the winter in the 48 conterminous States, especially the upper Mississippi and Missouri Valleys. These eagles are indistinguishable from those in populations that nest in the lower 48 States.

Considering the fact that the southern bald eagle already has been listed as Endangered, it would seem reasonable to extend Endangered status to populations in the northern part of the 48 conterminous States that are in comparable or worse condition. A Service survey in 1974 located 150 active bald eagle nests in Florida, 56 in the Chesapeake Bay region, and 26 in all other parts of the country south of 40°N. The survey also showed the presence of 33 active nests in Maine, but this population had the lowest successful reproduction ratio in the nation. In California, which on January 13, 1976, requested Endangered status for all of its bald eagles, there were 16 active nests north of 40°N. in 1974. In all other northern States, where the Endangered classification will apply, a total of 26 active nests was located in 1974.

The situation in the Northwest and upper Great Lakes region contrasts sharply with that in the remainder of the northern States. In 1974, Oregon had 63 active nests, and a 1975 survey indicated a total of 103 active nests in Washington. This population has a good ratio of successful reproduction, and, unlike that of Florida, is not isolated and actually is continuous with much larger populations extending through Canada to Alaska. The States of Minnesota, Wisconsin, and Michigan had a total of 318 active nests in

1974. Again, reproduction is good, and the population is continuous with others in Canada.

Considering the above, it has been decided to extend Endangered status to the bald eagle throughout the 48 conterminous States, except in Washington, Oregon, Minnesota, Wisconsin, and Michigan, where the species will be listed as Threatened. It is recognized that the populations in these five States do not meet the criteria for Endangered, as defined in Section 3(4) of the Act, and thus warrant less restrictive regulations than the other eagle populations in the 48 conterminous States.

#### SUMMARY OF CONTENTS

In response to the proposed rulemaking of July 12, 1976, letters of support were received from United States Senators Mike Gravel of Alaska, Floyd K. Haskell of Colorado, Gary Hart of Colorado, and Strom Thurmond of South Carolina; and from Representatives William M. Brodhead of Michigan, James P. Johnson of Colorado, and Patricia Schroeder of Colorado. Approximately 70 private citizens also wrote to express general approval of the proposal. Two other persons stated specifically that they would prefer to see the Endangered classification apply throughout the 48 conterminous States.

The United States Forest Service concurred with the proposal and supplied substantial data on bald eagles in National Forests. Of particular relevance is the following comment: "With respect to populations on the National Forests of Oregon, Washington, Minnesota, Wisconsin, Michigan, Montana, and Idaho, breeding success appears to be stable with only minor year-to-year fluctuations. However, our data reveals no cause for optimism, the nesting success rate is marginal and not improving, there are substantial threats to the habitat and poaching continues. There is little basis to refute classification as threatened."

The Governments of the following States sent written statements of concurrence with the proposal of July 12, 1976: Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Nevada, New Hampshire, New York, North Carolina, Ohio, Oklahoma, South Carolina, Virginia, Washington, West Virginia, and Wisconsin. Several of those States supplied data relative to their eagle populations. The Wyoming Department of Agriculture suggested that disease might be a factor threatening the eagle, but provided no further details. The California Bald Eagle Working Team, a group composed of State, Federal, and private representatives, supported the propos-

al and provided considerable data. The Oconto County Soil and Water Conservation District supporting listing of the eagle as Threatened in Wisconsin.

The Governments of the States of Colorado, Nebraska, and New Mexico expressed concern that by the new listing arrangement eagles might come under different, possibly improper, classifications as they moved from one State or country to another, especially with regard to wintering populations. The Service has considered this matter, but thinks that few practical difficulties are involved, and that the present rulemaking offers the simplest alternative in dealing with listing measures for the bald eagle.

The Idaho Department of Fish and Game objected to the proposal, suggesting that the Service wished to extent the listed status of the bald eagle only for administrative purposes, and not because the species actually was Endangered or Threatened. It is true that the proposal was made to eliminate administrative difficulties, but these difficulties came about because the biological status of the eagle was not properly covered by the original 1967 listing. The Service considers that all populations to be listed by the present rulemaking fully warrant classification because of biological factors.

The Governor of Minnesota opposed the classification of the bald eagle as Threatened in the State, stating that the species would not become Endangered within the foreseeable future. The Service agrees that the eagle population of Minnesota is doing well relative to most in the country, but considers that the absolute number of eagles in the State is small and cannot in itself assure the future of the species.

The Montana Department of Fish and Game opposed listing of the bald eagle, noting that its dozen or so nests were doing very well, and that large group of eagles entered the State during the winter. Montana also suggested that the Service wished to list northern eagles simply for administrative expediency, and not because the eagles actually are Endangered. Such is not the case; the rulemaking will facilitate administration because it will more accurately reflect the biological situation.

The Oregon Department of Fish and Wildlife objected to the proposal and stated that the Oregon bald eagle was not Threatened. Although the species is doing better in Oregon than in most States, it does not appear to be so abundant that it can be excluded from this classification.

The Governor of Utah expressed concern that the proposed measures might interfere with conservation programs dealing with wintering eagles. In fact, however, permits for scientific purposes or for the enhancement of

propagation or survival will be available in accordance with 50 CFR 17.22.

A number of parties involved in the lumber industry provided comments. The Clark Fork Logging Co. of Montana suggested that the bald eagle was not Endangered in its area, and called for an Environmental Impact Statement on the proposal. This question has been considered and dealt with by the environmental assessment prepared in conjunction with the rulemaking. The Edward Hines Lumber Co. and the Kalispel Pole & Timber Co. said that logging should not be listed as a factor threatening the bald eagle. The Service has information showing that in some cases logging has been harmful to eagles, but the proposal did not mean to imply that all logging is detrimental. The Federal Timber Purchasers Association questioned the need for a rulemaking, and also provided comments on the matter of Critical Habitat for the species, but Critical Habitat is not being considered at this time. The Simpson Lumber Co. indicated that the eagle was not Threatened in Washington. The Timber and Wood Products Group of Boise Cascade commented on financial implications of the proposal.

The Environmental Defense Fund opposed the proposal, stating that the bald eagle should be listed as Endangered throughout its entire range. The Act was interpreted to mean that if a portion of a subspecies (in this case *H. l. alascanus*) is designated as Endangered, the entire subspecies must be designated Endangered. The Service does not consider this interpretation to be valid.

The National Audubon Society, the American Ornithologists' Union, and the Smithsonian Institution expressed general approval of the proposal, but stated that it would be more appropriate to extend Endangered status to bald eagles in Oregon, and the southern parts of Minnesota, Wisconsin, and Michigan. The Service appreciates this suggestion, but maintains that in this case the designated State boundaries seemed most appropriate.

The National Wildlife Federation expressed the same concerns as the Audubon Society, and requested assurance that bald eagles designated as Threatened would receive essentially similar protection as those designated Endangered. The Service can give this assurance (see "Effect of the Rulemaking" below). The Wilderness Society also requested that stringent regulations apply to Threatened bald eagles.

#### LISTING CRITERIA

Section 4(a) of the Endangered Species Act of 1973 (16 U.S.C. 1533(a)) states that the Secretary of the Interior or the Secretary of Commerce may

determine a species to be Endangered or Threatened because of any of five factors. These factors, and their application to bald eagles in the 48 conterminous States of the United States, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The breeding range of the bald eagle has been considerably reduced in recent years, partly through widespread loss of suitable habitat. Human activities, such as logging, housing developments, and recreation have directly destroyed many nesting sites and have made others unattractive to the birds. In the northern part of the 48 conterminous States there were three major regions for bald eagle nesting: (1) New England and eastern New York; (2) the Great Lakes region from western New York to Minnesota; and (3) the Pacific Northwest from San Francisco Bay to Puget Sound. Some nesting also was found in the Plains and Mountain States. In recent years losses in habitat and range have been especially severe in the Northeast. Substantial nesting groups have been practically eliminated on Long Island, in the Adirondacks, and in most of New England, with a relatively small number of pairs holding out in Maine. In much of the Great Lakes region there also have been considerable declines. The formerly large population in Ohio, Indiana, the Lower Peninsula of Michigan, northern Illinois, and southern Wisconsin, has been greatly reduced. Substantial numbers now survive only in the northern parts of Minnesota, Wisconsin, and Michigan. In the Northwest there also appears to have been a decline in the population. The bald eagle once was a common breeder in the vicinities of San Francisco and Portland, but disappeared from these areas long ago. In other northern States the breeding range also has declined, with the population having been eliminated in Iowa and Nebraska and reduced elsewhere.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Shooting continues to be the leading cause of direct mortality in adult and immature bald eagles, accounting for about 40 to 50 percent of birds picked up by field personnel.

3. *Disease or predation.* Not applicable.

4. *The inadequacy of existing regulatory mechanisms.* The bald eagle already is protected throughout the United States by the Bald and Golden Eagles Protection Act (16 U.S.C. 668-668d), the Migratory Bird Treaty Act (16 U.S.C. 703-711), and regulations issued thereunder. The protective provisions of section 7 of the Endangered Species Act of 1973, however, have not previously applied to populations of bald eagles that are found in the

northern part of the 48 conterminous States.

5. *Other natural or manmade factors affecting its continued existence.* Organochlorine pollutants are still contributing to reproductive failure in some nesting areas, especially in the Northeast. Only a single nesting pair of eagles remains in New York, where once the species was common, and this pair failed to produce offspring in 1974. The 33 pairs in Maine produced 14 young in 1974 for a success ratio of only 0.38 young per active territory. This was the lowest of any of the major populations in the country. The number of eagles nesting near the shore of Lake Superior also has been reduced because of this factor.

#### EFFECTS OF THE RULEMAKING

Bald eagles are already protected by the Bald and Golden Eagles Protection Act, the Migratory Bird Treaty Act, and certain regulations issued thereunder (16 U.S.C. 668-668d, 703-711; 50 CFR 10.13, 21.2, 21.22, Part 22). These provisions basically prohibit the taking, possession, sale, purchase, barter, transportation, exportation, and importation of bald eagles (16 U.S.C. 668, 703). Limited exceptions are available for taking, possession, or transportation under scientific, exhibition, or Indian religious use permits and for taking under depredation control and banding or marking permits (16 U.S.C. 668a; 50 CFR 21.22, 22.21-22.23).

The prohibitions and exceptions made applicable to endangered bald eagles by this listing, principally 16 U.S.C. 1538-1539 and 50 CFR 17.21-17.22, must be read together with the prohibitions and exceptions established by the Eagle and Migratory Bird Treaty Acts. As provided in a special rule, 50 CFR 17.41(a), the same is also true for the prohibitions and exceptions established herein for the threatened bald eagles. Such provisions are set forth principally in 50 CFR 17.31-17.32 which apply to threatened species most of the restrictions and exemptions applicable to endangered species.

#### INTERAGENCY COOPERATION

Section 7 of the Act states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of

habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

Although no Critical Habitat now is being determined for the bald eagle, the other provisions of section 7 will apply to the populations covered by this rulemaking. The Service does intend to designate Critical Habitat for the bald eagle as soon as substantial data have been compiled. In this regard, persons with pertinent information are invited to send the same to the Director.

# NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared and is on file in the Service's Office of Endangered Species in Washington, D.C. The assessment is the basis for a decision that the determinations of this rulemaking are not major Federal actions which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rulemaking is Ronald M. Nowak, Office of Endangered Species (202-343-7814).

# REGULATIONS PROMULGATION

Accordingly, Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. By deleting the southern bald eagle (*Haliaeetus leucocephalus*) from the List of Endangered and Threatened Wildlife in § 17.11.

2. By adding alphabetically the following populations of the bald eagle to the list in § 17.11 under "Birds," as indicated below:

§ 17.11 Endangered and threatened wildlife.

Species		Range					
Common name	Scientific name	Population	Known distribution	Portion endangered	Status	When listed	Special rules
Eagle, bald.....	<i>Haliaeetus leucocephalus</i> .	U.S.A. (48 conterminous States other than Washington, Oregon, Minnesota, Wisconsin, and Michigan).	U.S.A. (48 conterminous States other than Washington, Oregon, Minnesota, Wisconsin, and Michigan).	Entire.....	E.....	1, 34	NA..
Do.....	<i>Haliaeetus leucocephalus</i> .	U.S.A. (Washington, Oregon, Minnesota, Wisconsin, and Michigan).	U.S.A. (Washington, Oregon, Minnesota, Wisconsin, and Michigan).	do.....	T.....	1, 34	17.41(a).

3. By deleting the notation "Reserved" from § 17.41 and inserting the following:

## § 17.41 Special rules—birds.

(a) Bald eagles (*Haliaeetus leucocephalus*) found in Washington, Oregon, Minnesota, Wisconsin, and Michigan.

(1) *Applicable provisions.* The provisions of §§ 17.31 and 17.32 shall apply to bald eagles specified in paragraph (a) of this section to the extent such provisions are consistent with the Bald and Golden Eagles Protection Act (16 U.S.C. 668-668d), the Migratory Bird Treaty Act (16 U.S.C. 703-711), and the regulations issued thereunder.

NOTE.—The Service has determined that

this document does not contain a major action requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: December 14, 1977.

LYNN A. GREENWALT,  
Director, Fish and  
Wildlife Service.

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